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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-1101.1/06

ATTY/TYPIST: AI:ads

BRIEF DESCRIPTION: Establishing a program of market regulation and surveillance within the office of the insurance commissioner.

1       AN ACT Relating to the establishment of a program of market  
2 regulation and surveillance within the office of the insurance  
3 commissioner; adding a new chapter to Title 48 RCW; prescribing  
4 penalties; and providing an effective date.

5       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION.   **Sec. 1.**   SHORT TITLE.   This chapter may be known and  
7 cited as the market regulation and surveillance law.

8       NEW SECTION.   **Sec. 2.**   PURPOSE AND LEGISLATIVE INTENT.   The purpose  
9 of this chapter is to establish a framework for the commissioner's  
10 market conduct actions, including:

11       (1)   Processes and systems for identifying, assessing, and  
12 prioritizing market problems that have a substantial adverse impact on  
13 consumers, policyholders, and claimants;

14       (2)   Market actions by a commissioner to substantiate such market  
15 problems and a means to remedy significant market problems; and

16       (3)   Procedures to communicate and coordinate market conduct actions  
17 among state insurance regulators to foster the most efficient and  
18 effective use of resources.

1        NEW SECTION.    **Sec. 3.**    SCOPE.    This chapter applies to all entities  
2 regulated by this title, and to all persons or entities acting as or  
3 holding themselves out as insurers in this state, unless otherwise  
4 exempted from the provisions of this title.

5        NEW SECTION.    **Sec. 4.**    DEFINITIONS.    The definitions in this  
6 section apply throughout this chapter unless the context clearly  
7 requires otherwise.

8        (1) "Best practices organization" means insurance marketplace  
9 standards association or a similar generally recognized organization  
10 whose purpose and central mission is the promotion of high ethical  
11 standards in the insurance marketplace.

12        (2) "Commissioner" means the insurance commissioner of this state.

13        (3) "Complaint" means a written or documented oral communication  
14 primarily expressing a grievance, meaning an expression of  
15 dissatisfaction.

16        (4) "Insurer" means every person engaged in the business of making  
17 contracts of insurance and includes every such entity regardless of  
18 name which is regulated by this title. For purposes of this chapter,  
19 health care service contractors defined in chapter 48.44 RCW, health  
20 maintenance organizations defined in chapter 48.46 RCW, fraternal  
21 benefit societies defined in chapter 48.36A RCW, and self-funded  
22 multiple employer welfare arrangements defined in chapter 48.125 RCW  
23 are defined as insurers.

24        (5) "Market analysis" means a process whereby market regulation  
25 personnel collect and analyze information from filed schedules,  
26 surveys, required reports, and other sources in order to develop a  
27 baseline understanding of the marketplace and to identify patterns or  
28 practices of insurers that deviate significantly from the norm or that  
29 may pose a potential risk to the insurance consumer.

30        (6) "Market action" means any of the full range of activities that  
31 the commissioner may initiate to assess and address the market  
32 practices of insurers, beginning with market analysis and extending to  
33 examinations. The commissioner's activities to resolve an individual  
34 consumer complaint or other report of a specific instance of misconduct  
35 is not market conduct actions for purposes of this chapter.

36        (7) "Market regulation personnel" means those individuals employed

1 or contracted by the commissioner to collect, analyze, review, or act  
2 on information on the insurance marketplace that identifies patterns or  
3 practices of insurers.

4 (8) "National association of insurance commissioners" (NAIC) has  
5 the same meaning as in RCW 48.02.140.

6 (9) "NAIC market analysis handbook" means the outline of the  
7 elements and objectives of market analysis developed and adopted by the  
8 NAIC, and the process by which states can establish and implement  
9 market analysis programs, or a successor product.

10 (10) "NAIC market conduct examiner's handbook" means the set of  
11 guidelines developed and adopted by the NAIC that documents established  
12 practices to be used by market regulation personnel in developing and  
13 executing an examination, or a successor product.

14 (11) "NAIC market conduct uniform examination procedures" means the  
15 set of guidelines developed and adopted by the NAIC designed to be used  
16 by market regulation personnel in conducting an examination, or a  
17 successor product.

18 (12) "NAIC standard data request" means the set of field names and  
19 descriptions developed and adopted by the NAIC for use by market  
20 regulation personnel in an examination, or a successor product.

21 (13) "Qualified contract examiner" means a person under contract to  
22 the commissioner, who is qualified by education, experience, or  
23 professional designations, to perform market conduct actions.

24 (14) "Targeted examination" means a focused examination, based on  
25 the results of market analysis indicating the need to review either a  
26 specific line or lines of business, or specific business practices,  
27 including but not limited to: (a) Underwriting and rating; (b)  
28 marketing and sales; (c) complaint handling; (d) operations and  
29 management; (e) advertising; (f) licensing; (g) policyholder services;  
30 (h) nonforfeitures; (i) claims handling; and (j) policy forms and  
31 filings. A targeted examination may be conducted by desk examination  
32 or by an on-site examination.

33 (i) "Desk examination" means a targeted examination that is  
34 conducted by an examiner at a location other than the insurer's  
35 premises. A desk examination is usually performed at the  
36 commissioner's offices with the insurer providing requested documents  
37 by hard copy, microfiche, discs, or other electronic media, for review.

1 (ii) "On-site examination" means a targeted examination conducted  
2 at the insurer's home office or the location where the records under  
3 review are stored.

4 (15) "Third-party model or product" means a model or product  
5 provided by an entity separate from and not under direct or indirect  
6 corporate control of the insurer using the model or product.

7 (16) "Insurance compliance self-evaluative audit" means a  
8 voluntary, internal evaluation, review, assessment, audit, or  
9 investigation for the purpose of identifying or preventing  
10 noncompliance with, or promoting compliance with laws, regulations,  
11 orders, or industry or professional standards, which is conducted by or  
12 on behalf of a company licensed or regulated under the insurance laws  
13 of this state, or which involves an activity regulated under this  
14 title.

15 (17) "Insurance compliance self-evaluative audit document" means  
16 documents prepared as a result of or in connection with an insurance  
17 compliance audit. An insurance compliance self-evaluative audit  
18 document may include:

19 (a) A written response to the findings of an insurance compliance  
20 self-evaluative audit;

21 (b) Any supporting information that is collected or developed for  
22 the primary purpose and in the course of an insurance compliance  
23 self-evaluative audit, including but not limited to field notes and  
24 records of observations, findings, opinions, suggestions, conclusions,  
25 drafts, memoranda, drawings, photographs, exhibits, computer generated  
26 or electronically recorded information, phone records, maps, charts,  
27 graphs, and surveys;

28 (c) Any of the following:

29 (i) An insurance compliance self-evaluative audit report prepared  
30 by an auditor, who may be an employee of the company or an independent  
31 contractor, which may include the scope of the audit, the information  
32 gained in the audit, conclusions, and recommendations, with exhibits  
33 and appendices;

34 (ii) Memoranda and documents analyzing portions or all of the  
35 insurance compliance self-evaluative audit report and discussing  
36 potential implementation issues;

37 (iii) An implementation plan that addresses correcting past

1 noncompliance, improving current compliance, and preventing future  
2 noncompliance; or

3 (iv) Analytic data generated in the course of conducting the  
4 insurance compliance self-evaluative audit.

5 NEW SECTION. **Sec. 5. MARKET ANALYSIS PROCEDURES.** (1)(a) The  
6 commissioner shall collect and report market data information  
7 to the NAIC's market information systems, including the complaint data  
8 base system, the examination tracking system, the regulatory retrieval  
9 system, other successor systems, or to additional systems as the  
10 commissioner determines is necessary for market analysis.

11 (b) Market data and information that is collected and maintained by  
12 the commissioner shall be compiled and submitted in a manner that meets  
13 the requirements of the NAIC and its systems.

14 (2) Each entity subject to the provisions of this chapter shall  
15 file a market conduct annual statement, in the general form and  
16 context, in the time frame required by, and according to instructions  
17 provided by the NAIC. The commissioner shall suspend or revoke the  
18 certificate of authority or other authorizing document of any entity  
19 that fails to file its market conduct annual statement when due or  
20 during any extension of time therefor, which the commissioner for good  
21 cause, may grant.

22 (3)(a) The commissioner shall gather information from data  
23 currently available to the commissioner, surveys, required reports,  
24 information collected by the NAIC, other sources in both the public or  
25 private sectors, and information from within and outside the insurance  
26 industry. The commissioner may request insurers to submit data and  
27 information that is necessary to conduct market analysis.

28 (b) The information shall be analyzed in order to develop a  
29 baseline understanding of the marketplace and to identify for further  
30 review insurers or practices that deviate significantly from the norm  
31 or that may pose a potential risk to the insurance consumer. The  
32 commissioner shall use the NAIC market analysis handbook as one  
33 resource in performing this analysis.

34 (4)(a) If the commissioner determines, as a result of market  
35 analysis, that further inquiry into a particular insurer or practice is  
36 needed, the following continuum of market actions may be considered  
37 before conducting a market conduct examination. The action selected

shall be made known to the insurer, in writing, if the action involves insurer participation or response. These actions may include, but are not limited to:

(i) Correspondence with the insurer;

(ii) Insurer interviews;

(iii) Information gathering;

(iv) Policy and procedure reviews;

(v) Interrogatories;

(vi) Review of insurer self-evaluation and compliance programs.

This may include consideration of the insurer's membership in a best practices organization, if the commissioner is satisfied that the organization's qualification process is likely to provide reasonable assurance of compliance with pertinent insurance laws;

(vii) Desk examinations; and

(viii) Investigations.

(b) Except in extraordinary circumstances, the commissioner shall select the least intrusive and most cost-effective market action that the commissioner determines will provide the necessary protections for consumers.

(5) The commissioner shall take those steps reasonably necessary to eliminate duplicative inquiries and coordinate market conduct actions and findings with other state insurance regulators.

(6) For purposes of conducting an examination or other market action on an insurer, the commissioner may examine or conduct a market action on any managing general agent or other person, insofar as that examination or market action is, in the sole discretion of the commissioner, necessary or material to the examination or market action of the insurer.

NEW SECTION. **Sec. 6.** PROTOCOLS FOR MARKET ACTIONS. (1) Market actions shall be taken as a result of market analysis and shall focus on the general business practices and compliance activities of insurers.

(2)(a) The commissioner is authorized to determine the frequency and timing of such market actions. The timing shall depend upon the specific market action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.

(b) If the commissioner has information that more than one insurer is engaged in common practices that may violate statutes or rules, the commissioner may schedule and coordinate multiple examinations simultaneously.

(3) The insurer may be given an opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the commissioner before any additional market conduct actions are taken against the insurer.

(4) For any change made to an NAIC work product referenced in this chapter that materially changes the way in which market actions are conducted, the commissioner may give notice and provide parties with an opportunity for a public hearing under chapter 34.05 RCW, or the commissioner may use the versions of the work products most recently developed and adopted by the NAIC.

NEW SECTION. **Sec. 7. ON-SITE MARKET CONDUCT EXAMINATIONS.** (1) When the commissioner determines that other market actions identified in section 5(4)(a) of this act are not appropriate, the commissioner has the discretion to conduct on-site market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market conduct examiner's handbook. RCW 48.03.010 shall not apply to market conduct examinations insofar as that statute requires periodic or regular examinations. However, in all other respects, chapter 48.03 RCW shall apply to market conduct examinations.

(2) In lieu of an examination of a foreign or alien insurer licensed in this state under this chapter, the commissioner may accept an examination report of another state provided that the state has a market surveillance system the commissioner deems comparable to the market regulation and surveillance system set forth in this law.

(3) Before commencement of an on-site market conduct examination, market regulation personnel shall prepare a work plan consisting of the following:

- (a) The name and address of the insurer being examined;
- (b) The name and contact information of the examiner-in-charge;
- (c) The justification for the targeted, on-site examination;
- (d) The scope of the on-site examination;
- (e) The date the on-site examination is scheduled to begin;



1 (f) Notice of any noninsurance department personnel who will assist  
2 in the examination;

3 (g) A time estimate for the on-site examination;

4 (h) A budget for the on-site examination if the cost of the  
5 examination is billed to the insurer; and

6 (i) An identification of factors that will be included in the  
7 billing if the cost of the examination is billed to the insurer.

8 (4) Market conduct examinations shall, to the extent feasible, use  
9 desk examinations and data requests before an on-site examination.

10 (5) Market conduct examinations shall be conducted in accordance  
11 with the provisions set forth in the NAIC market conduct examiner's  
12 handbook and the NAIC market conduct uniform examinations procedures.

13 (6) The commissioner shall use the NAIC standard data request.

14 (7) Announcement of the examination shall be sent to the insurer  
15 and posted on the NAIC's examination tracking system, as determined by  
16 the commissioner, as soon as possible but in no case later than sixty  
17 days before the estimated commencement of the on-site examination,  
18 except where the exam is conducted in response to extraordinary  
19 circumstances as described in section 6(2)(a) of this act. The  
20 announcement sent to the insurer shall contain the examination work  
21 plan and a request for the insurer to name its examination coordinator.

22 (8) The commissioner shall conduct a preexamination conference with  
23 the insurer examination coordinator and key personnel to clarify  
24 expectations before commencement of the examination.

25 (9) Before the conclusion of the field work for an on-site market  
26 conduct examination, the individual from the market regulation  
27 personnel who is designated as the examiner-in-charge shall schedule an  
28 exit conference with the insurer.

29 (10)(a) The commissioner shall adhere to the requirements of  
30 chapter 48.03 RCW concerning issuance of market conduct examination  
31 reports.

32 (b) The insurer's response shall be included in the commissioner's  
33 order adopting the final report as an exhibit to the order. The  
34 insurer is not obligated to submit a response.

35 (11)(a) The reasonable and necessary costs of a market conduct  
36 examination may be assessed against the insurer under examination. The  
37 fees shall be consistent with that otherwise authorized by RCW

1 48.03.060. The fees shall be itemized and bills shall be provided to  
2 the insurer on a monthly basis for review prior to submission for  
3 payment, or as otherwise provided by state law.

4 (b) The commissioner shall maintain active management and oversight  
5 of examination costs, including costs associated with the  
6 commissioner's own examiners, and with retaining qualified contract  
7 examiners necessary to perform an on-site examination. Any agreement  
8 with a contract examiner shall:

9 (i) Clearly identify the types of functions to be subject to  
10 outsourcing;

11 (ii) Provide specific timelines for completion of the outsourced  
12 review;

13 (iii) Require disclosure to the insurer of contract examiners'  
14 recommendations;

15 (iv) Establish and use a dispute resolution or arbitration  
16 mechanism to resolve conflicts with insurers regarding examination  
17 fees; and

18 (v) Require disclosure of the terms of the contracts with the  
19 outside consultants that will be used, specifically the fees and/or  
20 hourly rates that can be charged.

21 (c) The commissioner, or the commissioner's designee, shall review  
22 and affirmatively endorse detailed billings from the qualified contract  
23 examiner before the detailed billings are sent to the insurer.

24 NEW SECTION. **Sec. 8. ACCESS TO RECORDS AND INFORMATION.** (1)  
25 Except as otherwise provided by law, market regulation personnel shall  
26 have free, convenient, and full access to all books, records,  
27 employees, officers, and directors, as practicable, of the insurer  
28 during regular business hours.

29 (2) An insurer using a third-party model or product for any of the  
30 activities under examination shall cause, upon the request of market  
31 regulation personnel, the details of such models or products to be made  
32 available to such personnel.

33 (3) Each officer, director, employee, and agent of an insurer shall  
34 facilitate and aid in a market action or examination.

35 (4) No waiver of any applicable privilege or claim of  
36 confidentiality in the documents, materials, or information shall occur  
37 as a result of disclosure to the commissioner under this chapter.

(5) Market regulation personnel shall be vested with the power to issue subpoenas and examine insurance company personnel under oath when the action is requested by the commissioner under RCW 48.03.070.

(6) Notwithstanding the provisions of subsection (1) of this section, in order to assist in the performance of the commissioner's duties, the commissioner may:

(a) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies and law enforcement authorities, and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(b) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing the sharing and use of information consistent with this subsection.

**NEW SECTION.** **Sec. 9. CONFIDENTIALITY.** (1) All data and documents, including but not limited to working papers, third-party models or products, complaint logs, and copies thereof, created, produced, or obtained by or disclosed to the commissioner, the commissioner's authorized representative, or an examiner appointed by the commissioner in the course of any market actions or examinations made under this chapter, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this chapter, shall be confidential by law and privileged, shall not be subject to the provisions of chapters 42.17 and 42.56 RCW, shall not be subject to

1 subpoena, and shall not be subject to discovery or admissible in  
2 evidence in any private civil action.

3 (2) If the commissioner elects to issue a report of an examination,  
4 a preliminary or draft market conduct examination report is  
5 confidential and not subject to disclosure by the commissioner nor is  
6 it subject to subpoena or discovery. This subsection does not limit  
7 the commissioner's authority to use a preliminary or draft market  
8 conduct examination report and related information in furtherance of  
9 any legal or regulatory action, or to release it in accordance with the  
10 provisions of RCW 48.02.065.

11 (3) An insurance compliance self-evaluative audit document that has  
12 been provided to the commissioner is confidential by law and  
13 privileged, shall not be:

- 14 (a) Made public by the commissioner;
- 15 (b) Subject to the provisions of chapters 42.17 and 42.56 RCW;
- 16 (c) Subject to subpoena; and
- 17 (d) Subject to discovery and admissible in evidence in any private  
18 civil action.

19 (4) The disclosure of any self-evaluative audit document to the  
20 commissioner or the commissioner's designee shall not constitute a  
21 waiver of any privilege that may otherwise apply.

22 NEW SECTION. Sec. 10. MARKET REGULATION PERSONNEL. (1) Market  
23 regulation personnel shall be qualified by education, experience, or  
24 professional designations. The commissioner may supplement the  
25 in-house market regulation staff with qualified outside professional  
26 assistance if the commissioner determines that the assistance is  
27 necessary.

28 (2) Market regulation personnel have a conflict of interest, either  
29 directly or indirectly, if they are affiliated with the management, and  
30 have, within five years of any market action, been employed by, or own  
31 a pecuniary interest in the insurer, subject to any examination under  
32 this chapter. This section shall not be construed to automatically  
33 preclude an individual from being:

- 34 (a) A policyholder or claimant under an insurance policy;
- 35 (b) A grantee of a mortgage or similar instrument on the  
36 individual's residence from a regulated entity, if done under customary  
37 terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a "blind trust" into which any otherwise permissible holdings have been placed.

**NEW SECTION. Sec. 11. IMMUNITY FOR MARKET CONDUCT SURVEILLANCE PERSONNEL.** (1) No cause of action shall arise, nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, market regulation personnel, or an examiner appointed by the commissioner for any statements made, or conduct performed in good faith while carrying out the provisions of this chapter.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, market regulation personnel, or examiner under an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify in any way any common law or statutory privilege or immunity before the effective date of this act enjoyed by any person identified in subsection (1) of this section.

**NEW SECTION. Sec. 12. FINES AND PENALTIES.** (1) Fines and penalties levied as a result of a market action or examination shall be consistent, reasonable, and justified.

(2) The commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best practices organizations, and the extent to which insurers maintain regulatory compliance programs to self-assess, self-report, and

remediate problems detected, and may include those considerations in determining the appropriate fines or penalties levied in accordance with subsection (1) of this section.

NEW SECTION. **Sec. 13.** COORDINATION WITH OTHER STATE INSURANCE REGULATORS THROUGH THE NAIC. (1) The commissioner shall share information and coordinate the commissioner's market analysis, market actions, and examination efforts with other state insurance regulators. Such matters will be coordinated in accordance with guidelines adopted by the NAIC.

(2) If a market conduct examination or action performed by another state insurance regulator results in a finding that an insurer should modify a specific practice or procedure, the commissioner may, in lieu of conducting a market action or examination, accept verification that the insurer made a similar modification in this state.

NEW SECTION. **Sec. 14.** ADDITIONAL DUTIES OF THE COMMISSIONER. The commissioner shall designate a specific person or persons within the commissioner's office whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules, or regulations by employers, as defined in this chapter. These persons shall be provided with proper training on the handling of such information. The information shall be confidential and not open to public inspection.

NEW SECTION. **Sec. 15.** EFFECTIVE DATE. This act takes effect July 1, 2006.

NEW SECTION. **Sec. 16.** CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act constitute a new chapter in Title 48 RCW.

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